

CONOCO, INC.

IBLA 81-406

Decided June 23, 1982

Appeal from decision of the Wyoming State Director, Bureau of Land Management, denying protest against designation of Pedro Mountains unit as a wilderness study area. #WY-030-305.

Reversed.

1. Federal Land Policy and Management Act of 1976: Wilderness --  
Wilderness Act

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

2. Federal Land Policy and Management Act of 1976: Wilderness --  
Wilderness Act

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's first-hand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

APPEARANCES: Margo Harlan Sabec and Carl R. Pipoly, for appellant;  
Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management;  
Bruce Hamilton, Sierra Club, Northern Great Plains Office, Lander, Wyoming, for intervenor, Sierra Club.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Conoco, Inc. (Conoco), has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 22, 1981,

denying its protest of the designation of inventory unit #WY-030-305 (Pedro Mountains) situated in the Rawlins District, as a wilderness study area (WSA). 1/

On November 14, 1980, the BLM State Office published its final intensive inventory decision in the Federal Register, designating 5,990 acres in the Pedro Mountains unit as a WSA. 45 FR 75606 (Nov. 14, 1980).

The BLM decision was made pursuant to section 603(a) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1782(a) (1976), which provides, in relevant part, that: "[T]he Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 [16 U.S.C. § 1131 (1976)]." From time to time thereafter, the Secretary is required to report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the State Office pursuant to sections 201(a) and 603(a) of FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. The BLM decision marks the end of the inventory phase of the review process and the beginning of the study phase. 2/

The key wilderness characteristics described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131 (1976), which are assessed during the

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1/ In its brief in intervention, the Sierra Club argues that appellant lacks standing to bring the appeal because it is not "adversely affected" by the BLM decision as required by 43 CFR 4.410. We disagree. In its supplemental pleading, Conoco states that it owns uranium mining claims within the unit. Moreover, the potential conflict inherent in designation of the area as a WSA as a result of interim management to be undertaken pursuant to section 603(b) of FLPMA, 43 U.S.C. § 1782(b) (1976), is sufficient to confer standing on appellant under 43 CFR 4.410. See Koch Industries, Inc., 62 IBLA 45 (1982); California State Lands Commission, 58 IBLA 213 (1981).

2/ In its brief in intervention, the Sierra Club maintains that the Jan. 22, 1981, BLM decision was not "final" and was, therefore, not appealable to the Board. Intervenor maintains that a "final" decision is that which makes a final determination as to the status of the land, citing Solid Rock Ministries, Inc., 10 IBLA 169 (1973). Intervenor argues that BLM, by its decision, has not finally determined the status of the Pedro Mountains unit, but, merely, advanced the unit into the next phase of the wilderness review process. While it is true that the final status of the unit has not been determined, Departmental policy has made special provisions for the Board's jurisdiction. See, e.g., 45 FR 75608 (Nov. 14, 1980).

wilderness review process are size, naturalness, and either an outstanding opportunity for solitude or a primitive and unconfined type of recreation.

In April 1980, the Rawlins District Office had recommended that the Pedro Mountains unit be eliminated from further wilderness review based on the finding that configuration of this unit and the adjacent private lands seriously restrict the opportunity for solitude or recreation activity. The file contains the field notes of four BLM officials who initially evaluated the area. Their evaluations were combined in a "Staff Specialist Synopsis" dated January 1980, portions of which appellant has appended to his statement of reasons. This document summarizes BLM's findings as follows:

#### General Summary of Characteristics:

Field investigations documented the existence of roads and intrusions within the unit. One road leading to a uranium mine reduces the size of the unit by [blank] acres. The overall size was thus reduced to 5,990 acres. While the remaining unit meets the size criterion in terms of total acres it fails to provide an outstanding opportunity for either primitive, unconfined recreation or solitude. This is due largely to the fact that the land ownership pattern excludes parts of the Pedro Mountains which would be essential to provide an outstanding opportunity for primitive unconfined recreation or solitude. The ownership pattern excludes the foothills and slopes of the mountain in many places and leaves only the mountain tops.

Private land ownership includes a large part of Heath Peak. The Chimneys and the northern ridges, all of which are primary attractions in the Pedro Mountains. [sic]

The configuration of BLM lands in the unit is a constraint to solitude and primitive unconfined recreation. The only part of the unit that takes the shape of a block is the central portion around Pyramid Peak. The remainder of the unit is linear in shape and in fact is typically not over a mile wide at any point.

The narrow linear sections would restrict the recreation experience. Neither would the narrow strips provide outstanding solitude. Free movement in the mountains would be difficult without trespassing on surrounding private lands.

\* \* \* \* \*

This unit does not possess outstanding opportunities for either solitude or primitive unconfined recreation. The unit has opportunities for primitive hunting, camping, hiking, backpacking, and rock climbing, but none can be effectively pursued without the use of adjacent private lands.

### Land Ownership:

### Natural Characteristics:

Wildlife:

As there are no significant perennial streams in the Pedro Mountains, fishing opportunities are non-existent.

### A. SOLITUDE

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The Pedro Mountains are a small sparsely vegetated mountain range characterized by large expanses of bare igneous rock. Dense forest cover is found only in a few small tracts. Most major drainages leading away from the unit contain ways and some contain both ways and water developments.

Of critical importance to the determination of whether or not the area possesses outstanding opportunities for solitude is the land ownership pattern. The unit for the most part is narrow and linear. The only "blocked up" part lies around Pyramid peak. The unit is made up of mountain tops in public ownership and mountain slopes and surrounding sagebrush, grassland areas in private and state ownership. This narrow land pattern excludes part of the area which would be essential to have an outstanding opportunity for solitude. Most of the better camp sites in the unit which are secluded, and have adequate shelter and water are on private land or contain ways and water developments. The land pattern restricts movement to the point that it would be difficult to avoid other visitors in the unit, particularly in the southern extremity.

The only blocked-up area (Pyramid Peak) is small enough so that it cannot be considered outstanding. The average person could cross the unit in less than one hour from any location.

The entire inventory crew concludes that the unit is very nice but with so much of the mountains in private ownership and the linear land pattern outstanding opportunities for solitude are not available.

## B. PRIMITIVE AND UNCONFINED RECREATION

### Narrative:

The Pedro Mountains provide opportunities for several types of primitive, unconfined recreation. Deer and elk hunting, hiking, primitive camping and backpacking are the principal examples. Rock climbing opportunities also exist.

None of the opportunities can be considered outstanding in the inventory unit. None can be effectively pursued without the adjoining private and state lands. Primitive hunting would be restricted or confined without the use of the mountain slopes or some of the adjoining private lands. The better camp sites, draws with intermittent streams or springs, or on private lands or contain ways and/or developed springs and reservoirs.

The south part of the unit is narrow and somewhat linear.

It can be crossed on foot in less than a half hour. It does not include much more than mountain tops. In such a narrow

area, slopes, including the base of the mountain would be necessary for the recreation opportunities to be considered outstanding. In this type area hiking and backpacking on the federal lands only would be a restricted activity. One would have to be careful not to trespass on private lands. The south part which extends from Section 27, T. 27 N., R. 84 W., to Section 15, T. 27 N., R. 84 W., is connected to the main block by a narrow neck of land. Travel in and out of the south part would be restricted accordingly.

Rock climbing activities exist in the area. The primary attraction is the Chimneys. The best climbing area lies on private land outside the unit.

A large part of Heath peak lies on private land outside the unit.

The inventory team concluded that the Pedro Mountains was a very scenic area with significant attractions. They felt however, that none of those attractions could be effectively pursued without the use of the surrounding private lands.

On November 14, 1980, the State Director announced in the Federal Register his final intensive inventory decision to designate the Pedro Mountains unit as a WSA. 45 FR 75574 (Nov. 14, 1980). Provision was made for filing protests through December 15, 1980.

On December 14, 1980, Conoco filed its protest against designation of the Pedro Mountains as a WSA. In his decision denying the protest, the State Director explained the reversal of BLM's position as follows:

During the comment period following that proposed decision, [3/] we received approximately 25 comment sheets disagreeing with our conclusions and stating that the unit did provide opportunity for outstanding solitude and primitive recreation. These comment sheets were all from members of a union local in Ohio. Some of their members actually took the time to travel to Wyoming and review the unit on the ground. We also received letters from individuals and organizational spokesmen in Wyoming who disagreed with our conclusions on solitude and recreation. The overall message we got from the public comment period was that our conclusions on solitude and recreation were not shared by a substantial segment of the public and that we should reconsider dropping the unit.

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\* \* \* The primary purpose of the public comment period was to get a general response on how the public felt about our

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3/ This decision is not contained in the record.

proposed decision. The feedback we got indicated that the unit did possess wilderness characteristics and should be a wilderness study area. We have, therefore, conceded that the unit does offer the opportunity for outstanding solitude.

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\* \* \* As we stated in the Newspaper supplement, we were convinced that the area north of pyramid peak would provide an opportunity for someone to experience outstanding solitude. Since the opportunity for either solitude or primitive recreation is required, and the unit does provide opportunity for outstanding solitude, we have met that requirement. The public comment substantially disagreed with our proposed decision that outstanding solitude was not present and has supported our final decision that outstanding solitude is available in the unit.

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In summary, the Pedro Mountain Unit contains over 5,000 acres of roadless public land, and is in an essentially natural condition. The public substantially disagreed with our earlier proposed decision that outstanding opportunity for solitude was not present and we accept that. We have therefore, been convinced that there is opportunity, in several places within the unit for a person to experience outstanding solitude. The wilderness inventory procedures do not require the unit to possess supplemental values. The rehabilitation potential for intrusions in the unit is satisfactory. Therefore, your protest is denied and the decision to retain the Pedro Mountains as a Wilderness Study Area remains unchanged.

The thesis of Conoco's appeal is that the State Director erred in designating the unit a WSA based on conclusory public comment. Conoco bases its case on the field notes of the BLM investigators and on the synopsis from which we have quoted above to support its contention that the unit does not meet the requisite wilderness criteria.

In its reply, BLM points out that the Wilderness Inventory Handbook (WIH) requires full public involvement and use of public input. BLM states that "the public comments are valuable because of the unavoidably subjective element involved in applying the [wilderness] criteria." BLM contends that appellant has not demonstrated error in the State Director's reliance on public comment.

There were 30 public comments submitted on printed BLM forms. On these forms the commenter is asked to signify agreement or disagreement with BLM's findings by checking the appropriate boxes on each of four criteria (size, naturalness, outstanding opportunity for solitude, and outstanding opportunity for primitive, unconfined recreation). The forms invite the commenter to give reasons for his responses, attaching separate sheets if necessary.

Twenty-five of the forms contain identical typed responses for all the criteria, indicating that the unit meets the size requirement and "is quite natural with no noticeable intrusions by man." Under the heading of solitude and primitive, unconfined recreation are the following responses, respectively:

Outstanding opportunity for solitude is available throughout the unit but especially in the many draws and canyons around the Chimneys, Heath Peak, and Pyramid Peak.

The area has outstanding opportunities for hunting, hiking, primitive camping, and rock climbing on the above mentioned peaks which are very rugged. The unit meets the criteria and should be a WSA.

Also, the Sierra Club submitted a document dated August 20, 1980, and captioned "Site Specific Comments on BLM Wilderness Intensive Inventory Units in the State of Wyoming" which included the Sierra Club's comments on the initial recommendations of BLM that the Pedro Mountains unit should be eliminated from further wilderness review. Sierra Club's brief mentions "2,500 letters, coupons, and petitions" presumably directed in part to the Pedro Mountains unit. There is nothing specific in the decision or the record about these responses.

[1, 2] Section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), requires that an area have "outstanding opportunities for solitude or a primitive and unconfined type of recreation." An area may meet either criterion. For solitude, the emphasis is on "outstanding opportunities," but the opportunities need not be available at all times and at all places in an area.

The WIH provides the following guidance to BLM on the issue of solitude:

In making \* \* \* [the determination whether a unit has outstanding opportunities for solitude,] consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit.

Factors or elements influencing solitude may include size, natural screening, and ability of the user to find a secluded spot. It is the combination of these and similar elements upon which an overall solitude determination will be made.

(WIH at 13). With regard to outstanding opportunities for a primitive and unconfined type of recreation, the WIH states at page 14: "An area may possess outstanding opportunities for a primitive and unconfined type of recreation either through the diversity in the number of primitive and unconfined recreational activities possible in the inventory unit or the outstanding quality of one opportunity."

We have carefully reviewed the narrative in BLM's synopsis in light of these guidelines and we find that the conclusions as to lack of outstanding opportunities for both criteria are cogently reasoned and well supported by



pertinent factual data. The field notes and the narrative compiled therefrom reflect a thorough acquaintance with the unit and a credible appraisal of its wilderness characteristics. We have often held that in making the evaluations required by the wilderness inventory process, BLM's judgment is entitled to considerable deference, and that an appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome that deference. Sierra Club, Utah Chapter, 62 IBLA 263 (1982); Koch Industries, Inc., *supra*; Conoco, Inc., 61 IBLA 23, 28 (1981). In the case before us, the deference due BLM's judgments was erroneously overridden by the State Director's decision. <sup>4/</sup> The sole basis for his reversal of BLM's earlier findings apparently is public comment which cannot, at close scrutiny, be considered "input" or "public participation" as those concepts are stated in the WIH and generally understood. As we have previously noted, the majority of these comments are no more than conclusory expressions of opinion that the unit meets the criteria for solitude and primitive recreation. The record contains no indication that most of the individuals who filed these

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<sup>4/</sup> A document in the file states that during the comment period following the proposed decision to drop the unit from further consideration 27 public comments were received on the Pedro Mountains unit, 70 percent from persons in Ohio and about 25 percent from Wyoming and the remainder from the other western states. This document continues:

"The comments from Ohio stated that the area had wilderness character and should be designated a wilderness study area. The remaining comments were evenly split concerning the question of wilderness characteristics.

"A large part of the comment was inconclusive. Most of the comment favoring wilderness study did not address the question of naturalness, an important factor in the proposed decision to drop the unit. The suggestions that the unit provided an outstanding opportunity for primitive, unconfined recreation or solitude did not provide convincing reasons for BLM to change the proposed decision. Therefore, the proposed decision to drop the unit from further consideration is the final decision. "November 15, 1980

"The Wyoming State Office (BLM) has reviewed the comment received and the intensive inventory completed for the Pedro Mountain Unit. The State Office felt that the comment received (largely from Ohio) was sufficient reason to reverse the earlier proposed decision. Further, the State Office felt that the land ownership pattern in evidence in the Pedro Mountains could not detract from the opportunities for either solitude or primitive, unconfined recreation."

In our view, this is not sufficient documentation to justify the State Director's decision to overrule BLM's initial recommendations. Guidelines for documentation of internal differences are found in OAD 78-61, Change 3, at page 1:

"In cases where staff, District Manager, and/or State Director recommendations do not agree, a narrative explanation of the changed recommendation must be included in the intensive inventory documentation file, in all summary narrative documents, and in any other information available to the public. The original intensive inventory form is not to be modified through erasures, deletions, or additions."

conclusions made their own assessment of the unit or, at least, relied on a first hand assessment by another party. In any event, the fact that the identical conclusion was filed 25 times does not lend it greater profundity or enhance its probative weight. A difference of opinion is insufficient to reverse a determination to include or exclude land from a WSA without a showing that such determination was based on a clear error of law or a demonstrable error of fact. Idaho Cattlemen's Association, 63 IBLA 30 (1982); Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). In this case, appellant has established that the State Director's conclusion that the unit exhibited the requisite wilderness criteria was not supported by the record and, in fact, that it was contrary to the recommendations of the BLM personnel who examined the unit in the field. The unsupported opinions of various commenters that the unit had the necessary characteristic were not sufficient to support the State Director's action. The State Director should have acted favorably on the protest.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director, designating unit #WY-030-305 as a WSA is reversed.

Gail M. Frazier  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

